

Model Friend of the Court Handbook

**Friend of the Court Bureau/SCAO
Michigan Supreme Court**

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Introduction

This handbook summarizes the friend of the court's (FOC) duties and procedures in domestic relations cases, the parties' rights and responsibilities, and some basic court procedures.

The family division of the circuit court hears and decides domestic relations cases and other family law cases. Those cases include divorce, paternity, custody, and support matters, plus some other family-centered disputes. The FOC office is part of the circuit court and is supervised by the chief judge. The FOC assists the court in domestic relations cases that involve minor children.

Parents can make family disputes less stressful for their children by maintaining their children's regular routines, encouraging frequent contact between the children and both parents, supporting the other parent's involvement in the children's schooling and other activities, and exchanging information about the children. When parents cooperate, they lay a solid foundation for their new parental relationships and responsibilities. Children want both parents to be part of their lives, to attend their graduations and weddings, to celebrate the births of their children, and to be part of other major life events. They want to be able to say that, despite how Mom and Dad may have felt about one another, they always treated each other with courtesy and respect, and they never put their children in the middle of their dispute.

Parties' Rights and Responsibilities

Each party has the right to:

- Request a meeting with the FOC employee who is investigating custody, parenting time, or support.
- Ask the FOC to recommend that an order for support or health insurance be modified. See *Support Modification Actions Started by Parties* later in the handbook.
- Expect the FOC office to perform its duties under Michigan laws and court rules.
- Be treated fairly and courteously by FOC employees.
- File a grievance with the FOC office concerning an FOC employee or an FOC office procedure.
- Hire and consult with an attorney.
- Decline all FOC assistance ("opt out") -- if both parties agree and the court approves.

Each party has the responsibility to:

- Provide the following information *in writing* to *every* FOC office that is administering a case involving that party:
 - Current residential and mailing addresses.
 - Current employer's (or other source of income) name, address, and telephone number.
 - Current residential telephone number.
 - Occupational or driver's licenses held, and the driver's license number.
 - Social security number, unless exempt by law from disclosing that number.
 - Current residence of children.
 - Current information regarding health care coverage that is available to either party as a benefit of employment, or that either party purchases directly from an insurer.
- Provide other information required by law to help the FOC carry out its duties.
- Obey all court orders.
- Keep FOC appointments.
- Treat the FOC employees courteously.

Friend of the Court Duties

Michigan law created the FOC system in 1919. At least one FOC office serves each circuit court's family division. The FOC has the following duties:

- When a child's parents cannot agree, or when directed by the judge, to conduct an investigation and to make recommendations to the court regarding:
 - Custody.
 - Parenting time.
 - Child support, medical support, and sometimes spousal support.
- To offer voluntary mediation services to help settle disagreements about custody or parenting time.
- In cooperation with the Michigan State Disbursement Unit (MiSDU), to collect, record, and distribute support payments as ordered by the court.
- To help the court enforce orders for custody, parenting time, and support.
- To inform the parties they may decline FOC services.

- To make available standardized court forms that parties may use to file motions and responses regarding custody, parenting time, and support.
- To inform the parties of the availability of joint custody.

The FOC has no authority to do the following:

- Investigate abuse and neglect.
- Change an order
- Investigate criminal activity.
- Give legal advice to either party.

Together with the Office of Child Support (OCS), local FOC offices administer all aspects of Michigan's child support program. OCS is part of the Michigan Department of Human Services (DHS.) OCS administers the child support requirements of the federal Social Security Act.

OCS also coordinates efforts to find absent parents, oversees the Michigan State Disbursement Unit (MiSDU), and manages income tax intercepts and certain other enforcement remedies.

This handbook describes the general duties of the FOC. Some specific procedures vary by county. You may discuss any questions regarding local or statewide procedures or requirements with your local FOC office or with your attorney.

To become familiar with some family law and FOC legal terms, please refer to the glossary at the end of this publication.

Opting Out of All Services Offered by the FOC

Parties who agree that they do not need the FOC's services do not have to use them. They may file a joint motion to "opt out" and, if the court approves it, the parties then must deal with each other directly. Before the court may approve a motion to opt out, the parties must sign and file a document that summarizes the available FOC services and acknowledges that the parties have chosen not to use those services.

The opt-out motion should be filed at the same time as the complaint that starts the case. If an opt-out motion is filed, the court must order the FOC not to open a case file unless one or more of the following are true:

- A party is eligible for (Social Security Act) Title IV-D services (see the glossary at the end of this document for a description of IV-D Services) because the party is receiving or has applied for public assistance.
- A party has applied for IV-D services.

- A party has asked the FOC to open a case file.
- There is evidence of domestic violence or bargaining inequality, coupled with evidence that the opt-out request is against the best interests of a party or the parties' child.

Even after the court case has been started and the FOC has opened a file for that case, the parties may file an opt-out motion requesting the court to order the FOC to close its file. The court will issue the order unless one or more of the following are true:

- A party objects to the closure.
- A party is receiving public assistance.
- Within the previous 12 months, a support arrearage has existed or a custody or parenting time violation has occurred.
- Within the previous 12 months, a party has asked the FOC to reopen its case file.
- There is evidence of domestic violence or bargaining inequality coupled with evidence that the request is against the best interests of a party or the parties' child.

Parties who “opt out” must assume full responsibility for administering and enforcing the court’s orders. To assure a proper accounting of support payments and their consideration in future proceedings, the parties may make support payments through the MiSDU even after a FOC case file is closed. At any time, a party can cause the FOC office to reopen its case file by applying for public assistance or by requesting any service from the FOC.

Court Procedures

Starting a Case

No court can require a party to use an attorney. However, anyone who wants to start a court case must follow the Michigan Court Rules and Michigan Laws. Because most cases involve difficult legal and factual questions, most people want to be represented by an attorney.

Plaintiff’s Complaint

A case begins when the person requesting the court’s assistance (the plaintiff) files a “complaint” that asks the court to decide a dispute between the plaintiff and the other party (the defendant.) In a domestic relations case, the plaintiff may ask the court to do any of the following:

- Grant a divorce.
- Order a person to pay child support (including medical support) or spousal support.

- Establish paternity.
- Establish custody of a child with one (or both) parties.
- Establish each party's parenting time with a child.

Service

The plaintiff must arrange for the defendant to be served with a summons and a copy of the complaint. The summons tells the defendant to answer the complaint. Whenever minor children are involved or spousal support is being requested, a friend of the court informational handbook (this handbook or one like it) must be given to the defendant, along with the summons and complaint.

Defendant's Answer to the Complaint

The defendant usually is allowed 21 days to answer the complaint. If the defendant does not answer within 21 days, the judge may enter an order granting the plaintiff's requests.

Hearings

After a complaint and an answer have been filed, either party may file a motion asking the court to decide the custody, parenting time, and child support issues. Often the FOC will provide a type of alternative dispute resolution or conduct an evaluation before the court makes a decision regarding custody, parenting time, or child support. The court usually holds a hearing to get the information it needs to decide those issues.

Both parties must be notified of the time and place of a hearing. This advance notice gives the parties an opportunity to appear at the hearing and tell the judge or referee what they think the court should do.

Court Orders

When a court makes a decision, it must sign a written order summarizing the decision. Someone must prepare the order. Usually, one of the attorneys prepares the order, but sometimes the judge prepares it. Either way, an order is not enforceable until a judge signs it and someone files the signed order with the county clerk. A referee can only recommend an order and prepare it; the recommended order does not become enforceable until a judge signs it or until it enters because neither party objected within a certain amount of time. If you disagree with an order and want to challenge it, your options include filing a motion for a rehearing (by the judge who issued the order) or filing an appeal (to a higher court). You cannot change an order by filing a grievance or by complaining to other government agencies.

Preliminary Orders

Courts sometimes enter temporary orders that remain in effect only until the parties have an opportunity to present more detailed evidence and arguments at a later hearing. This often happens in divorce cases.

ExParte Orders (temporary orders entered at the request of one party before any formal hearing)

A judge will enter an ex parte order without the other party present when the judge believes that serious harm will occur if the judge defers issuing any orders until the opposing party has the opportunity to speak with the judge. Ex parte orders usually are intended to keep the situation stable until the judge can hear from both parties. A party who disagrees with an ex parte order may file a written objection to the order or file a motion asking the court to change or cancel the order. Even if an objection or motion is filed, the ex parte order will remain in effect until it is changed by the court.

When an ex parte order deals with custody, parenting time, or child support, the order will include a notice that a written objection or a motion to change the order may be filed within 14 days. If a party files an objection, the FOC will try to help the parties settle the dispute without going to court. If the parties cannot agree, the FOC will provide the forms and instructions that a party who is not represented by an attorney will need to schedule a court hearing.

Temporary and Final Orders

After the court decides a motion challenging an ex parte order, it will enter a temporary order with instructions that the parties must follow until a final judgment order (or a modified temporary order) is entered.

Orders (including judgment orders that deal with custody, parenting time, and child support) can be changed, but only the court can modify an order; the FOC cannot. Normally, a court will change an order if both parties have agreed to the change. Otherwise, the court will modify an order only after one party (or the FOC) files a motion and the court holds a hearing on the motion.

The parties' agreement to change a previous court order will be recognized by the court and the FOC only after the judge signs and enters a new order that approves the agreement. Merely telling or writing to tell a FOC employee or a Department of Human Services worker that the parties have agreed to something cannot change the court's previous order.

Sometimes, the law requires the FOC to ask the court to change an order. (See *Parenting Time Enforcement and Modification of a Support Order* later in this document).

Referee Decisions

A referee is not a judge, but performs some tasks on behalf of the judge who is presiding over the case. A referee may hold hearings, examine witnesses, and make recommendations to a judge.

The chief judge of a circuit court may appoint a referee to hear testimony and arguments on any issue in a domestic relations case except spousal support (alimony), which only a judge may hear.

A referee hearing differs from a hearing before a judge. The proceeding is usually less formal. A referee's decision is only a recommendation to the judge. A referee's recommendation will become a court order only if neither party files an objection within specific time limits or (if a party does object) only after the court holds a hearing and the judge then signs an order approving the referee's recommendation. However, the court may make the referee's recommended order effective temporarily until either the time to object to the recommended order expires or the judge hears an objection (at a "de novo hearing.")

A party who disagrees with a referee's recommendation may request a de novo (or "new") hearing before the judge. The objection and a request for a hearing must be in writing and must be filed with the circuit court clerk within 21 days after the referee's recommendation is mailed or delivered.

You should consult an attorney for more information on how to object to a referee's recommendation and how to request a hearing before a judge. Also, some FOC offices will provide written instructions that explain how to file an objection.

Reconciliations and Dismissals

Not every domestic relations case ends with the parents divorced or separated. If the parents are trying to work out their differences and no longer wish to have an order in their case enforced, they may file a motion asking the court not to enforce the order.

If the parties wish to stop all further action on a case, they must file a proposed order of dismissal with the court and provide a copy to the FOC. In that situation, when the state of Michigan has provided financial assistance to the parties' children or spouse while the case was pending, the support payer must pay any previously-ordered child or spousal support to the state of Michigan.

This reimbursement may be less than the amount of assistance, but it cannot be more. The exact support amount will depend on how much support the court's order required. Finally, before the case may be dismissed, the support payer must pay any amounts owed to the court or the county. If those requirements are met, the court will sign an order dismissing the case.

Enforcing Orders When One Parent Leaves Michigan

The obligation to pay child support does not end when a parent leaves Michigan, even if it is the custodial parent and the parties' children who move. Both parents must tell the FOC whenever they move. The support payer must continue to pay support and the friend of the court must continue to enforce the court order.

If a support payer leaves Michigan and stops paying as ordered, there are laws that allow Michigan courts to have their support orders enforced in other states. For example, every state has passed the Uniform Interstate Family Support Act (UIFSA), a law that allows one state's court to set and enforce support obligations when the parents live in or earn an income in

different states. Under UIFSA, a court in another state may be required to use its laws to withhold the payer's income, enforce the order, set or modify a support order, or assist with finding the payer's assets. For more information, see *The Uniform Interstate Family Support Act* (UIFSA) (PSA 29) located at:

<http://www.courts.mi.gov/scao/resources/publications/pamphlets/focb/psa29.pdf>

Alternative Dispute Resolution

When parties go to court, the judge makes decisions affecting the family. If you are a party to a domestic relations case, you are encouraged to participate in alternative dispute resolution (ADR), which may allow you to settle your case without further court proceedings. In addition to parents, ADR may involve grandparents and other third parties.

Mediation is the most common type of ADR. Mediation allows the parties to settle the issues without the court's direct involvement. Parties often find this rewarding because they make the decisions, instead of the court. However, even if you participate in ADR, the court must ultimately enter an order. Many times the court order will reflect the agreement reached by the parties during mediation. The next few sections summarize the kinds of ADR that are available in domestic relations cases. Contact an attorney or the FOC to determine which methods are available in your area.

Friend of the Court Domestic Relations Mediation

The FOC offers mediation services to help parents resolve custody and parenting time disputes. Those are the only two issues that the FOC is allowed to mediate. In most cases, the FOC does not charge for providing mediation services.

FOC mediation is voluntary; that means that both parties must be willing to participate. If you reach an agreement during mediation, the mediator can put it into writing. You may review this agreement with your attorneys. The agreement can be made part of a court order.

Matters discussed during mediation are confidential. A FOC employee who acts as a mediator may not share information about what happened during mediation, except for what is stated in the parties' signed agreement. The mediator cannot later, in the same case, enforce an order, investigate an allegation, or serve as a referee regarding any other issues in that case.

Court Rule Domestic Relations Mediation

The court may refer family matters to non-binding mediation under the Michigan Court Rules, specifically MCR 3.216. This may happen by agreement of the parties, on the motion of one party granted by the judge, or on the court's own initiative.

Unlike the FOC mediation summarized earlier, court rule mediation is not necessarily voluntary and is not limited to only custody and parenting time issues. The court may order mediation for any disputed issue. The parties may agree to have the case mediated by any person who has the qualifications specified in the court rule. If the parties cannot agree on a mediator, the court's

ADR clerk will assign one from a list of qualified mediators. The person who performs court rule mediation is entitled to a reasonable fee. The parties usually share that expense equally.

Once ordered, court rule mediation is mandatory. The parties must attend the mediation sessions. They may be accompanied by their attorneys. Any information shared with the mediator is considered privileged. The mediator may not disclose this information to anyone. If the parties reach an agreement during mediation, the agreement must be put in writing and be signed by the parties. The parties must then take the necessary steps to have the mediation agreement entered as a court order.

If the parties do not reach an agreement, the mediator may prepare a report to the parties setting forth the mediator's own recommendations on the issues. If both parties accept the mediator's recommendations, the parties must then take the necessary steps to have the recommendations entered as a court order. If either party rejects the mediator's recommendation, even in part, then all issues in the case must go to trial. The judge who conducts the trial will not know what the mediator recommended or which party rejected the mediator's recommendation.

Arbitration

In some counties, parties may agree to resolve their dispute by arbitration (sometimes called binding mediation). The arbitration may be conducted by one person or a multi-person panel. The arbitrator will consider the parties' arguments and may hear testimony from witnesses. If, in the end, the parties still cannot agree on how to resolve the issues, the arbitrator will make the decision and the parties must accept that decision.

A court may overrule ("vacate") an arbitrator's decision only in exceptional circumstances. That can happen if the court finds that the arbitrator exceeded his or her powers, wrongly refused to hear evidence, or was biased. It is very rare for a court to vacate an arbitrator's decision. If the arbitrator's decision is not vacated, the court will enforce the decision as if it were the court's own.

Information About Custody, Parenting Time, and Support Payments

Custody

There are many different kinds of custody arrangements. For any arrangement, the court must decide who will make the major decisions about each child. The court also must decide how much time the child will spend with each parent.

Parents are encouraged to reach their own agreements regarding custody. When parents cannot agree, the judge will decide by analyzing the "best interests of the child" factors listed in the Michigan Child Custody Act. Those factors will be analyzed at a hearing during which the parents may present evidence and arguments about each factor.

At either parent's request, the court must consider ordering "joint custody," an arrangement in which both parents participate in making the major decisions that affect their child. If both parents agree to a joint custody arrangement, then the court must order it unless the court

determines that joint custody is not in the “best interests of the child.” The court must state on the record its reasons for granting or denying the request for joint custody. The court also may consider ordering joint custody even if neither parent has requested it. A judge who is considering ordering joint custody must consider both the “best interests” factors and also whether the parents will be able to cooperate and usually agree on important decisions affecting their child’s welfare.

If the court determines that a child’s interests are not adequately represented in the custody proceedings, the court may appoint a lawyer-guardian ad litem to represent the child in the court proceedings. If the parties have the ability to pay, the court may require them to pay the lawyer-guardian ad litem’s fees.

For more information about child custody issues, see *Michigan Custody Guidelines* at: <http://courts.michigan.gov/scao/resources/publications/manuals/focb/custodyguideline.pdf>

Custody Questions and Answers

Can a custody order be changed if both parents agree?

Both parents may sign an agreement and present an order to the court. If the judge approves and signs the consent order, it will then become the new custody order.

Do I need an attorney to file a motion to change custody?

You may file the motion on your own, and the FOC will provide the forms and instructions that you will need. However, the court will expect you to follow the same rules that an attorney must follow. There are many complex issues in a custody case and most people prefer to have an attorney represent them. The FOC cannot file a motion for you, nor can that office provide you with an attorney or tell you what to say in the motion.

Can the FOC assist parties in reaching an agreement regarding custody?

Yes. The FOC provides domestic relations mediation when there is a custody dispute and both parties agree to participate in mediation. (See Alternative Dispute Resolution in the glossary at the end of this document).

If a motion for custody has been filed, and the parents cannot reach an agreement on their own, what will the friend of the court do?

The FOC must:

- Offer mediation services to the parties.
- If the judge directs, investigate the custody issue and file a written report and recommendation based upon the “best interests of the child” factors listed in the Michigan Child Custody Act.

May I receive a copy of the FOC's custody report and recommendation?

Upon request, and before the court acts on the recommendation, the FOC must give each party or that party's attorney a copy of the report, including the custody recommendation and a summary of the information used in making the recommendation.

What happens if I have custody according to the court's order, but the other parent does not return the child to me as required by the order?

- You may contact the FOC office and request that it enforce the order.
- You may contact your attorney.
- If you believe the other parent will refuse to return the child, you may contact the police or the prosecuting attorney and ask either to file a parental kidnapping charge.

How do I enforce the custody order if the other parent takes our child to another country?

When a child who is a U.S. citizen is illegally kept outside of this country, the U.S. State Department's Office of Children's Issues will work with the local U.S. embassy and the other country's government to assist the child and the lawful custodial parent. However, because child custody disputes are private legal disputes between the two parents, the State Department has no jurisdiction to force the other parent to obey a court order. If the parents cannot reach an agreement, this kind of child custody dispute often must be resolved by judicial proceedings in the country where the child and the other parent are living. The State Department will help the lawful custodial parent file the appropriate documents with the foreign authorities. It also will monitor and report on the foreign judicial or administrative proceedings.

How do I contact the Office of Children's Issues at the U.S. Department of State?

You can write to: Department of State, Office of Children's Issues, SA-29, 2201 C Street, NW; U.S. Department of State, Washington, DC 20520-2818.

You also may call 1-888-407-4747, fax 202-736-9080, or go to the State Department's internet website for foreign travel at http://travel.state.gov/family/family_1732.html

Is the FOC allowed to investigate child abuse or neglect?

No, the FOC does not have that authority. Abuse or neglect should be reported (in the county where the custodial parent and children live) to the Department of Human Services' (DHS) Child Protective Services Division.

A judge will consider allegations of abuse or neglect when making a decision on custody or parenting time. The FOC office has a duty, when ordered by the court, to conduct custody or parenting time investigation. Concerns about abuse or neglect should be disclosed to the FOC during this type of investigation. However, both the judge and the FOC will rely on Child Protective Services to investigate and evaluate the abuse or neglect allegations.

May my child enroll in my local school, even though the child lives in another school district with the other parent most of the time?

When the parents live in different school districts, Michigan law allows a child to attend a school in either district, regardless of which parent has custody. When a child regularly resides in two school districts, which often happens when the parents have true joint custody, the child may attend school in either or both districts.

Parenting Time

A parenting time order specifies when a child will spend time with each parent. During parenting time, that parent is responsible for all routine decisions affecting the child. The Michigan Child Custody Act states:

“Parenting time shall be granted to a parent in a frequency, duration, and type reasonably calculated to promote a strong relationship between the child and the parent granted parenting time. If the parents of a child agree on parenting time terms, the court shall order the parenting time terms . . . [unless it is shown] that the parenting time terms are not in the best interests of the child. A child has a right to parenting time with a parent unless it is shown on the record by clear and convincing evidence that it would endanger the child’s physical, mental, or emotional health.” (MCL 722.27a)

That statute also lists factors that the judge may consider when determining the frequency, duration, and type of parenting time. (MCL 722.27a[6]).

Parenting Time Guidelines are posted on the Michigan Supreme Court’s website at: http://courts.michigan.gov/scao/resources/publications/manuals/focb/pt_gdlns.pdf

Parenting Time Enforcement by the FOC

The FOC is required to enforce parenting time orders. The FOC office usually will initiate enforcement action when it receives a written complaint stating specific facts that show a violation of an order governing custody or parenting time. However, the FOC may decline to respond if (1) the alleged violation occurred more than 56 days before the complaint is made, (2) the complaining party has previously made two or more similar complaints that were found by the court to be unwarranted and the complaining party has failed to pay the costs assessed in those prior proceedings, or (3) the court order does not include an enforceable parenting time provision.

The FOC starts enforcement proceedings by sending a copy of the written complaint to the accused party within 14 days after the FOC office receives the complaint. If it finds that the court’s order has been violated, the FOC may suggest “makeup” parenting time, start an action requiring the party to show cause why the court should not find the party in contempt, file a motion to modify existing parenting time provisions, schedule mediation, or schedule a joint meeting with the parties.

Parenting Time Modification Motions

A party may file a motion to change the parenting time order. The FOC office has printed forms and instructions for filing this type of motion. You may want to hire an attorney to assist you with the motion. .

If both parents agree to change the parenting time arrangement, they may sign an agreement to that effect and ask the judge to modify the current order. It is important to remember that, even though the parties have agreed to a change, the current order remains in effect until the judge signs a new order and it is filed with the county clerk.

Parenting Time Questions and Answers

My order for parenting time states I will have “reasonable” parenting time. What does this mean?

An order that grants “reasonable” parenting time assumes that you and the other parent will agree to a parenting time schedule that is convenient for both of you and the child.

If you and the other parent cannot agree on a “reasonable parenting time” schedule you may:

- Ask the other parent to agree to attend mediation with the FOC or seek counseling (either with you or separately).
- Ask the FOC to determine whether the order is specific enough to allow the office to offer assistance.
- File a motion on your own or contact an attorney.

My order lays out a specific parenting time schedule. I would like to change that schedule. What can I do?

First, ask the other parent to agree to a change. If you agree, then both of you should sign the agreement, or otherwise prove to the court that you agree. The judge usually will sign an order that is based on the parents’ agreement. Remember that the agreement by itself is not enforceable; it must first be converted into a new court order.

If you cannot agree on the changes, either parent may ask the FOC to mediate the dispute. The FOC will provide mediation services if both parents agree to participate. If no agreement is possible, you may file a motion asking the court to order a new parenting time schedule. You may file the motion on your own, or have an attorney file it for you.

The other parent is not making the child support payments required by our court order. Do I have to allow parenting time?

Yes. You must continue to obey the order’s parenting time provisions. Ask the FOC to enforce the child support provisions. (See *Enforcement Methods* later in this document).

The other parent is not sending or returning clothing or other personal items that our child uses during parenting time. Can the FOC can do something about that?

The FOC can only enforce the court's written orders. If your court order does not say anything specific about transferring clothing or other personal items, try to work it out with the other parent directly or with help, such as FOC mediation services. If that is unsuccessful, you may file a motion requesting a new court order that will require that clothing or other personal items be transferred along with your child before and after parenting time.

The other parent is not obeying the parenting time order. What can I do?

File a written complaint with the FOC . (See *Parenting Time Enforcement*).

If I think that the other parent is under the influence of alcohol or drugs, do I have to let the children go with that other parent for scheduled parenting time?

That is your decision as a parent. If you violate the court order in such a situation, you may have to explain your decision to the court at a "show cause" hearing held to decide whether you should be held in contempt of court for disobeying the parenting time order. That will be your opportunity to explain why your decision was in the best interests of the children. If the judge agrees, you will not be held in contempt or otherwise punished.

The other parent will not let me telephone my children. What can the FOC do?

The FOC can only enforce the written orders of the court. If your court order does not provide for telephone calls, try to negotiate an agreement with the other parent. You may request FOC mediation or other methods of resolution. In addition, you may file a motion asking the court to modify the order to require that you be allowed to call your children.

I think that my child is being abused during parenting time spent with the other parent. What should I do?

Report your concerns to the Department of Human Services' Child Protective Services Division in the county where the custodial parent and children live. The FOC does not have the authority to investigate abuse or neglect allegations, nor can it remove children from the home of a person who commits or allows mistreatment. Only Child Protective Services can do that.

My child does not want to spend time with the other parent. What can I do?

Parents must obey court orders regardless of the child's age and preferences. Each parent must try to promote a positive relationship between the child and the other parent. You may want to try the following:

- Work out a different arrangement with the other parent.
- Seek counseling for your child, yourself, or the other parent.
- Contact the FOC and request mediation.
- File a motion asking the court to change your parenting time order.

The other parent refuses to see our children. What can the FOC do?

The FOC cannot force a parent to see his or her children. To promote a positive relationship with the children and the other parent, you may wish to consider counseling, mediation, or filing a motion to change the parenting time order.

Support

A "support order" is any court order that requires a parent or ex-spouse to pay:

- Child support.
- Spousal support (formerly called "alimony").
- Medical, dental, and other health care expenses.
- Confinement expenses (the mother's childbirth costs and medical bills).
- Child care expenses.
- Educational expenses.

All support orders state an amount that is due on the first day of each month. Support is past due if not paid by the last day of the month. When an order takes effect on a day other than the first day of a month (or ends on a day other than the last day of the month), the support amount must be prorated for the partial month.

Support Investigations and Reports

The FOC is required to periodically review an order's child support provisions, including health care. The FOC will ask the court to modify the order if a change is warranted. (See *Modification of a Support Order*.) As part of this periodic support review, the FOC may request information from a parent's employer. That includes things like the parent's address, social security number,

date of birth, earnings, and the details of any dependent health care coverage that is available as a benefit of employment. If a court so directs, the FOC will, in addition to the periodic reviews summarized above, evaluate the current order's support provisions and submit a written report and recommendation to the parents (or their attorneys) and the judge.

Child Support Formula

Michigan law requires a standard child support formula to be used to determine how much child support a parent must pay. That standard formula considers the parents' incomes, how many children they have, and other factors. The court may set a support amount that differs from the formula number, but only if the judge explains in writing or during a court hearing why the formula number is "unjust or inappropriate." For more information about the child support formula, see *"Facts About the Michigan Child Support Formula"* (PSA 24) which can be found at:

<http://courts.michigan.gov/scao/resources/publications/pamphlets/focb/psa24.pdf>

More information is available on the Michigan Supreme Court's website at:

<http://courts.michigan.gov/scao/services/focb/focb>

Support Payment Procedure

Unless otherwise ordered, support payers must make their payments to the Michigan State Disbursement Unit (MiSDU).

When a payment received by the MiSDU sufficiently identifies the person to whom the support should be paid, the MiSDU will forward the money to the recipient within two business days.

In most cases, support payments are automatically withheld from a payer's wages. If you pay MiSDU directly, please write your case number on your check. Do not send cash through the mail.

Once a year, on written request, the FOC will give the parties a free statement of their support account.

Statutory Service Fees

Michigan law requires the FOC to charge the support payer an annual service fee, currently \$42 per year.

Surcharge on Overdue Support

Surcharges are added on January 1 and July 1 each year. The surcharge equals the average interest rate on money judgments, plus one percent. If the support payer has paid 90 percent or more of the support that was due in the previous six months, no surcharge will be assessed. The court can also order that no surcharge be assessed, but a motion must be filed first.

Automatic Support Enforcement

When support payments are more than one month past due, the FOC must begin enforcement action without waiting for a request for enforcement.

Enforcement Methods

The FOC has several methods of collecting past due support. They include:

- **Immediate Income Withholding**

The FOC can require the support payer's employer (or other income source) to withhold some of the support payer's income and send the money to the MiSDU. The payer will be notified before the income withholding starts. The payer has a right to challenge the income withholding at an administrative hearing. Also, the FOC can administratively adjust (usually by increasing) the income withholding, but the FOC office must first send the payer a notice of arrearage. The payer can object to the adjustment after receiving the notice of arrearage.

Most support orders entered or changed after December 31, 1990, must provide for income withholding even without a showing that the support payer has missed payments or is likely to do so. A judge who does not want to require income withholding must find "good cause" for departing from the general rule. Good cause exists when:

All of the following exist:

- The court makes a specific written finding that income withholding is not in the best interests of the child;
- All previously ordered support has been paid on time; and
- The payer agrees to keep the FOC informed of the name, address, and telephone number of his/her current source of income, and about any health care coverage offered by the payer's employer or coverage that the payer purchases directly from a health insurer.

Or

- Both parties and the court agree that income withholding will not take effect immediately because a satisfactory alternative payment arrangement has been made. Even in this situation, the payer must keep the FOC informed of the name, address, and telephone number of his/her current source of income, and about any health care coverage offered by the payer's employer or coverage that the payer purchases directly from a health insurer.

- **Contempt of Court (Show Cause Hearing)**

If support is not paid on time, the FOC or a party may begin a contempt action against the payer. The court will order the payer to appear in court and "show cause" why the court should not find the payer "in contempt of court." For more information about show cause proceedings, see *"Show Cause Proceedings in Domestic Relations Cases"* (PSA 25) at

<http://courts.michigan.gov/scao/resources/publications/pamphlets/focb/psa25.pdf>

- **Income Tax Intercept**

If child support is overdue and the case otherwise satisfies certain statutory requirements, the FOC must request an income tax “intercept.” In such cases, any tax refund to which the support payer is entitled will be paid to the FOC, which will apply the money to pay past due support. For more information about tax intercepts, see *“Tax Refund Offset Program”* (PSA 13) at

<http://courts.michigan.gov/scao/resources/publications/pamphlets/focb/psa13.pdf>

- **Other Enforcement Remedies**

If the payer is more than two months behind on the support payments, the FOC must report the arrearage to a consumer credit reporting agency and the court may suspend the payer’s driving, occupational, sporting, or recreational licenses. Also the FOC may place a lien on the payer’s real and personal property, which then can be sold to pay the support arrearage. For more information, see: *“Friend of the Court Enforcement of Domestic Relations Orders”* (PSA 27) at:

<http://courts.michigan.gov/scao/resources/publications/pamphlets/focb/psa27.pdf> and

“Information About Using Liens To Obtain Past Due Support” (PSA 23) at:

<http://courts.michigan.gov/scao/resources/publications/pamphlets/focb/psa23.pdf>.

- **Criminal Nonpayment of Support**

Under federal and Michigan law, failing to pay child support may be a felony criminal offense. The FOC does not have the authority to bring felony charges. Charges based on Michigan law are filed and prosecuted by county prosecutors or the Attorney General. Federal charges are filed and prosecuted by the United States Attorney’s office.

- **Health Care Enforcement**

The court may order one or both parents to provide health insurance coverage for the children. If the court orders a parent to obtain available health insurance coverage from an employer and the parent fails to do so, the FOC will send a medical support notice to the parent’s employer. The employer then must enroll the employee’s children in the employer’s plan and deduct the premiums from the employee’s wages.

Some health care expenses are not covered by typical health care plans. Therefore, the court’s support order also will require each parent to pay a percentage of those “noncovered expenses.” As of October 1, 2004, some support orders will require that some of the noncovered health care expenses be included with the child support payment and paid in advance. These noncovered expenses are often referred to as “ordinary health care expenses.” Ordinary health care expenses include things such as co-payments, deductibles and over-the-counter expenses. The FOC will help collect the other parent’s share of those noncovered medical expenses if the following four conditions are satisfied:

- The amount exceeds the yearly annual ordinary amount in the order or the requesting parent is the support payer.

- One parent requested payment from the other parent within 28 days after receiving an insurer's determination that an expense was not covered.
- The other parent did not pay within 28 days after the request for payment was made.
- The FOC's assistance is requested within one year after incurring the expense, or within six months after the insurer has denied coverage, or within six months after the other parent failed to pay as required.

If the FOC receives a parent's request that meets those four requirements, the FOC will notify the other parent that, if no objection is filed within 21 days, the unpaid amount will become a support arrearage and subject to any of the enforcement processes summarized earlier. If an objection is filed, the FOC must schedule a court hearing to decide who is responsible for the amount that the health insurer did not pay.

- **Modification of a Child Support Order**

The FOC will review child support orders automatically once every 36 months if the child or one of the parents is receiving public assistance. In other cases, the FOC will conduct a review on written request by a party, but not more often than once every 36 months. If you need an immediate change in the support amount because of a change in your income or the other parent's income, you should file a court motion requesting the change. Simply notifying the FOC that one parent's financial situation has changed cannot automatically change the ordered support amount.

- **Threshold for a FOC Motion to Modify the Support Order**

The FOC will ask the court to change the required monthly support payment if the difference between the current support amount and the amount determined by the standard child support formula (using the parties' most recent income data) is at least 10 percent or \$25.00 per month, whichever is less. If the difference between the current support amount and the current formula amount is less than that minimum threshold, the FOC is not required to request a change.

- **Party's Motion to Modify the Support Order**

A party may file a motion to change the support order. The FOC will provide forms and instructions to any party who wishes to file this type of motion without the assistance of an attorney. Alternatively, a party may hire an attorney to file a modification motion.

- **Agreement to Modify the Support Order**

If the parties agree to change the support amount to a different amount determined by the child support formula, they may sign an agreement. That agreement, once put in the form of an order, signed by the judge, and filed with the county clerk, becomes the new support order.

- **Retroactive Modification of Support Generally Not Allowed: Exception**

Once child support is ordered, a later increase or decrease in the support amount generally cannot apply to any time period before the motion for a change was filed. Michigan law recognizes one exception to that rule: a court may modify support retroactively if a party

who has been ordered to do so has intentionally failed to report an income change to the friend of the court or has made a report that misrepresented that party's income.

Child Support Questions and Answers

How do I get an order for child support?

If no one has yet commenced a civil lawsuit that raises the child support issue, you first must file a complaint that includes a request that the court enter a child support order. If you and the other parent agree to establish support at the amount determined by the standard child support formula, you may sign an agreement. Once that agreement is put in the form of an order, signed by the judge, and filed with the county clerk, it becomes the court's support order. If you cannot agree to follow the formula, the judge will determine the appropriate support amount.

Do I need an attorney to get a support order?

You are not required to have an attorney. However, you may find that you need an attorney's help to file the correct papers and otherwise follow the court rules.

May I receive child support after my child reaches age 18?

Child support can continue up to age 19½ if the child attends high school on a full-time basis with a reasonable expectation of completing sufficient credits to graduate and the child continues to reside on a full-time basis with the person who receives the support payments.

If I have been paying child support as required by the court's order but the custodial parent will not allow me the parenting time required by that order, do I have to keep paying support?

Yes. An order's parenting time and child support provisions are enforced separately. (See *Parenting Time Enforcement*).

The other parent is not paying child support as ordered. What can I do?

Contact the FOC for enforcement help if the other parent is more than one month behind on the support payments. You may also hire an attorney to start enforcement proceedings.

My court order says to pay support through the Michigan State Disbursement Unit. May I pay the other parent directly?

No, and you might not receive credit for payments made directly to the other parent.

If I am receiving TANF or Family Independence Program (FIP) public assistance, may I also receive child support?

No. In that situation, the MiSDU must send any support payments that it receives from the other parent to the Department of Human Services to offset the public assistance that you received.

Will FOC make sure that child support money is spent on the children?

No. The law does not authorize the FOC to investigate how the custodial parent spends child support payments. However, the court may change the custody or support arrangements if you can show that the custodial parent has neglected the children's needs.

Will the court modify the support order if the payer is in jail or prison?

The support amount is determined by the standard child support formula, which considers the parties' incomes. The FOC is required to initiate a review within 14 days of receiving notice that a parent has been incarcerated or released from incarceration.

Miscellaneous Issues

Change of Domicile/Change of Legal Residence

How do I get the court's approval to change the children's residence to a place not allowed by my current order?

Parties may agree to a change of residence (domicile) by signing an agreement (stipulation). This stipulation must be put in the form of an order and signed by the judge. It then becomes an order of the court. If you and the other parent cannot agree on the proposed change of domicile, you may:

- Try mediation through the friend of the court; or
- File a motion that asks the court to enter an order approving the change.

Notifying the FOC that you intend to move the children (or merely *filing* a motion requesting the court's approval) does not allow you to move your children. You must obtain a court order approving the move.

Enforcement of Judge's Oral Ruling

Why won't the FOC enforce what the judge said in court, even if it's not in the written order?

The FOC's authority is limited to enforcing *written* orders.

If you think a written order does not say what the judge said in court, first tell the person who prepared the order and request a change. If necessary, you can file a motion that asks the court to correct the order.

Property Settlement

Can the FOC enforce property settlement provisions in my judgment of divorce?

No. The FOC has no authority to enforce the court's property-division order. The court itself will enforce that order. If the other party does not comply with an order, you may file a motion asking the court to enforce the order.

Access to Friend of the Court Records

May I review the FOC file for my case?

Parties and their attorneys are entitled to see most of the information in their FOC file. There are exceptions for certain confidential documents. See Michigan Court Rule 3.218. The FOC may charge a reasonable fee for copying records.

If the FOC office will not let you see its file, you may file a motion asking the court to intervene on your behalf to allow access.

May other persons see my friend of the court file?

A FOC file is not public information. However, the law requires an FOC office to allow the county's Friend of the Court Citizen Advisory Committee to see some case records of parties who have filed grievances with that office. A committee member who discloses case-record information is guilty of a misdemeanor.

Access to Other Records

May I see my child's school, medical, and other records if my child lives with the other parent?

Michigan law gives both parents the right to see certain records, regardless of the custody arrangement, including medical, dental, school, and day-care records. In addition, both parents are entitled to receive advance notice of meetings that concern their child's education. However, the FOC cannot enforce that law. You may wish to consult an attorney if you are denied any of those rights.

Adoptions, Marriages, and Military Enlistments; How They Affect Child Support

What happens to my child support order if my minor child is adopted, marries, or enters the military service?

When any of those "emancipating events" occur, the court will grant a motion ending the obligation to pay further child support. Copies of adoption orders, marriage records, or military service records should be provided to the court. Any overdue support must still be paid.

Parent Locator

Will the FOC help find a missing parent?

Yes. The state and federal governments have a parent locator service that may be used to locate a parent for any of the following purposes:

- Collect child support.
- Obtain a court order on child custody or parenting time matter, or enforce an existing order of either type.
- Enforce state or federal law prohibiting the unlawful taking or restraint of a child.

When using the parent locator service, the following information is very helpful:

- The missing parent’s full name, date of birth, and social security number.
- The missing parent’s last known address.

Citizen Advisory Committee

What is a citizen advisory committee and what does it do?

Each court may appoint a Friend of the Court Citizen Advisory Committee (CAC). A CAC advises the county board of commissioners and the Circuit Court Family Division’s chief judge about the FOC office’s performance and the community’s needs for additional friend of the court services. A CAC may review a grievance filed with the CAC that complains about FOC office operations. For more information on the citizen advisory committee’s role in grievances, see the “*Complaints*” section of this handbook.

Who can serve on my county’s citizen advisory committee?

The county board of commissioners or, where applicable, the county executive appoints the “public” members of the CAC. To be appointed, a person must live in the county. The public appointees include a noncustodial parent, a custodial parent, an attorney who specializes in family law, a mental health professional who provides family counseling, and two members of the public who do not fit into any of those categories. In addition, the CAC must include the county sheriff, the county prosecutor, and the county director of the Department of Human Services or their designees.

Complaints About Attorneys, Judges, or the FOC

How do I file a complaint about the FOC?

The Friend of the Court Act includes a grievance process. You may use it to complain about an FOC office’s operations or employees. A grievance may not be used to change the friend of the court’s recommendation in your case, or to challenge a referee’s recommendation or a judge’s decision. Depending on the subject of your grievance and when you file it, you will receive a response from the FOC, the chief judge, or the local citizen advisory committee.

You can file a grievance in two ways:

- (1) You may file a grievance about the FOC office’s operations or employees with the local FOC office. You should use a grievance form that you can get from your local FOC office or from the Michigan’s One Court of Justice website at <http://courts.michigan.gov/scao/courtforms/domesticrelations/focgeneral/foc1a.pdf>

Within 30 days, the FOC must investigate your grievance and respond in writing or explain why a response cannot be provided within that time.

If you are not satisfied with the FOC’s response, you may file the same grievance with the chief circuit court judge.

- (2) You may file a grievance about office operations with the citizen advisory committee. Grievances filed with the citizen advisory committee may complain about only the friend of the court's office operations, not individual employees. Since the committee's role is advisory, it cannot decide the grievance. However, if the committee or subcommittee is reviewing, investigating, or holding a hearing on a grievance, the meeting will be closed to the public. After the committee or subcommittee meets, it then can report its findings to the chief judge and the county board of commissioners.

How do I file a complaint about the conduct of a judge or referee?

The Judicial Tenure Commission reviews complaints that allege misconduct by judges or referees. The Commission can recommend that the Michigan Supreme Court discipline a judge or referee who has acted unethically. However, the Commission is not a court; that means that it cannot change a court order or a referee's recommendation. To obtain that relief, you must either seek rehearing by the same court or file an appeal.

If you wish to file a complaint about misconduct by a judge or referee, contact:

Judicial Tenure Commission
Cadillac Place, Ste 8-450
3034 W. Grand Blvd.
Detroit, Michigan 48202
(313) 875-5110

How do I file a complaint about my attorney?

The Attorney Grievance Commission investigates complaints of misconduct by Michigan attorneys. If you wish to file a complaint (called a "request for investigation"), contact:

Attorney Grievance Commission
Marquette Building, Suite 256
243 West Congress Street
Detroit, Michigan 48226
(313) 961-6585

Other Local Human Services Agencies

Your local FOC office may be able to provide a list of local human service organizations that can assist you in ways that the FOC cannot.

Glossary of Frequently Used Terms

Adjournment - Postponing a hearing until a later time or date.

Affidavit - A person's written statement of fact verified by that person's oath or affirmation sworn before a notary public.

Alimony - See spousal support.

Arrearage - The total of support payments that are overdue.

Bench Warrant - A court order to arrest a person and bring that person before the court that issued the warrant.

Chief Judge - In courts with two or more judges, one judge is selected as chief judge. The chief judge administers the court.

Domestic Relations Action - Any litigation involving divorce, paternity, custody, parenting time, or support.

Domicile - The permanent home to which a person, even when temporarily living elsewhere, always intends to return.

Evidence - The testimony of a witness, documents, or other items presented to a court to prove a fact.

Family Division of Circuit Court - The division of the circuit court that hears domestic relations and juvenile cases.

Department of Human Services (DHS) - The state agency that provides public assistance to families. The Child Protective Services and the Office of Child Support are divisions of DHS.

Friend of the Court - In this handbook, depending on the context, "friend of the court" usually means an office that assists the circuit court's family division. The office investigates, makes recommendations, and helps enforce court orders that affect minor children. "Friend of the Court" also is the formal title of the person in charge of that office.

Joint Custody - There are two types of joint custody which may exist together or be combined with another custody arrangement:

Joint legal custody: The children live primarily with one parent, although both parents participate in major decisions affecting the children.

Joint physical custody: The children live with each parent for extended periods.

Jurisdiction - The court's power to decide cases that come before it. Whether a court has jurisdiction over a case depends on the type of case and on the parties' connections to the county where the court is located.

Motion - A formal written request that a court take a specified action. A motion is sometimes called a petition.

Order - The written and signed decision of the court.

Party - A lawsuit's plaintiff or defendant.

Payee - The person or agency entitled to receive support payments. Payee is also known as a support recipient.

Payer - The person who must pay support. Also known as the payer or obligor.

Petition - See motion.

Pleadings - Papers filed with a court by a party to a lawsuit. Pleadings state claims against the other party or state that other party's defenses to claims.

Reconciliation - When parties to a domestic relations action work out their differences and decide to remain together as a family unit.

Show Cause Hearing - The court hearing at which a person must respond to a charge that he or she violated a court order. Also known as a "Contempt of Court" hearing.

Spousal Support - The money paid to support a spouse or former spouse. Formerly known as "alimony."

State Disbursement Unit - The state office that receives and distributes the support payments required by court orders.

Statute of Limitations - The statute that sets the time limit for seeking relief from a court. Different types of claims are subject to different statutory deadlines for starting a lawsuit.

TANF - Temporary Assistance for Needy Families, a joint federal and state program formerly known as Aid to Families with Dependant Children (AFDC or ADC). In Michigan, TANF is also known as the Financial Independence Program (FIP).

Title IV-D Services - Activities to establish, enforce, account for, and collect child support in cases where a party to a domestic relations case has requested IV-D services.

Waive - To give up a right, claim, or privilege.